THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1055 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TEXTILES LABOUR ASSOCIATION - Petitioner(s)
Versus
PADMABEN MANILAL PARMAR & 1 - Respondent(s)

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Appearance :
MR DS VASAVADA for Petitioner(s) : 1,
MR AK CLERK for Respondent(s) : 1,
DELETED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 03/08/2006

ORAL JUDGMENT

1. Heard the learned advocate Mr. D.S. Vasavada appearing on behalf of the petitioner – Textiles Labour Association and learned advocate Mr. A.K. Clerk appearing on behalf of the respondent – workman.

2. The petitioner - Textiles Labour Association has challenged the award passed by the Labour Court, Ahmedabad in Reference No.1048 of 1985 dated 31st August 1996. The Labour Court, Ahmedabad has partly allowed the reference granted reinstatement with continuity of service with 70% back wages of interim period. This Court, while issuing rule, has granted interim relief against the implementation of the award subject to compliance of Section 17-B of the Industrial Disputes Act, 1947 by order dated 18th March 1997. From the record of the petition, an affidavit has been filed on behalf of petitioner by one Mahendrakumar A. Maniar, office bearer of petitioner Association, to bring on record the certain events and facts which have occurred during the pendency of petition. There is no affidavit–in reply filed by the respondent workman. Learned advocate Mr. Vasavada submitted that during the pendency of this petition, the last drawn wages has been paid to respondent – workman by the petitioner.

3. Learned advocate Mr. Vasavada challenging the award in question raising certain contentions before this Court. He submitted that Textiles Labour Association was established in the year 1917. The Textiles Labour Association is a registered trade union in the year 1936 under the provisions of the Trade Union Act, 1926. The petitioner – union is a representative union under the provisions of the Bombay Industrial Relation Act, 1946. According to

him, petitioner union having his own constitution and according to the constitution, all the activities are based on such constitution of the Union. The respondent was appointed as a trainee in the month of January 1981. Initially, work was assigned for posting of entry in respect to subscription of members received by petitioner union, then she was given a work of Telephone Operator and ultimately, by notice dated 24th September 1984, her service was terminated with effect from 31st December 1984. The respondent had filed petition before this Court challenging the termination which was withdrawn and then dispute was raised which referred for adjudication to the Labour Court. The award of the Labour Court is published on 10th December 1996, then learned advocate Mr. Vasavada submitted that the crucial question is that whether petitioner being a trade union is an 'industry' or not? He read before this Court Page 19, 20 and other relevant pages of the award passed by the Labour Court. He also emphasis the constitution of the Union and pointed out that Union is not having any activities beyond the constitution. He submitted that because of the large membership handling by elected body, some short of organization is bound to be there cannot change the nature of union activities. He also submitted that finding given by the Labour Court is absolutely erroneous and perverse. The petitioner union is answerable to the member meaning thereby accountable to the members. The petitioner union having only the membership of Mill Company. No other persons became a

member of the petitioner union. The decision of the Bangalore Water Supply is not applicable to the case of the petitioner union activities and while referring page 22/23, he again emphasis that Labour Court has committed further error in coming to the conclusion that petitioner union is an 'industry'. He also submitted that the function of the trade union is to satisfy grievance of the members viz. Textiles Industries. The petitioner – union is not running any Khadi Shop. He relied upon the decision of Full Bench of this Court in case of ***Gujarat Forest Producers, Gatherers & Forest Workers Union v. State of Gujarat*** reported in ***2004(2) GLR 1488***, the relevant page 1516, Para 20, Para 26(1) and Para 73 and he read over all these paragraphs by emphasis the facts that trade union activities are not satisfied the triple tests laid down by the Apex Court and considered by full bench of this Court. He distinguished the decision of the Bombay High Court in case of ***Vasudeo Ambre v. State of Maharashtra & Others*** reported in ***1988 Lab.I.C. 554 = 1988(1) LLJ 464.*** He submitted that this decision is not applicable which has been relied by the Labour Court because in that case, the question was challenging the refusal of referring the dispute by the authority and no real question has been examined by the Bombay High Court. He relied upon the decision of ***Bombay High Court*** in case of ***Kiran Industrial Premises Co-operative Society Ltd. v. Janata kamgar Union and Others*** reported in ***2001-I LLJ 1499*** Para 2 that Society collects the subscription or some amount of maintenance from the

members cannot to be an 'industry' within the meaning of Section 2-J of the Industrial Disputes Act, 1947. He also relied upon the decision of Division Bench of **Karnataka High Court** in case of ***Radhakrishna Bhakta v. Subramanya Shastri and Another*** reported in ***2006-II LLJ 669*** then decision of Apex Court reported in ***2001-II LLJ 1064*** in case of ***Bharat Bhawan Trust v. Bharat Bhawan Artists' Association and Another***. He relied upon Para 7 that promotion of art or artistic talent cannot be satisfied the human wants and wishes and therefore, it is not an 'industry'. He rightly emphasis the nature of work which has been identified by the trade union that trade union has to work for workman / members. He relied upon one decision of **Madhyapradesh High Court** in case of ***Project Director, District Literacy Samity v. Ms. Mamta Shrivastava and Another*** reported in ***2006-I LLJ 103*** and then he also relied the decision of the Apex Court in case of ***Physical Research Laboratory v. K.G. Sharma*** reported in ***1997 SC 1855***. He also relied upon the decision of **Madhyapradesh High Court** that State Farm Corporation is not held to be an 'industry'. He also submitted that recently by Apex Court in case of ***State of U.P. v. Jaibir Singh*** reported in ***2005-II LLJ 831***, the decision of Bangalore Water Supply has been questioned and referred to larger bench for reconsideration. Therefore, decision of Bangalore Water Supply cannot be now, made to applicable or to rely in this case.

4. On merits, learned advocate Mr. Vasavada

submitted that respondent having four years service alternatively he relied upon the decision of the Apex Court in case of ***Haryana State Electronics Development Corporation Ltd. V. Mamni*** reported in ***2006-II LLJ 744*** and submitted that in such circumstances, when reinstatement is not possible, then Court can grant compensation to the concerned workmen. He also relied upon another decision in case of ***Nagar Mahapalika (Now Municipal Corporation) v. State of U.P. And Others*** reported in ***2006-II LLJ 748*** in respect to the back wages, the question is that workman is not entitled for any amount of back wages. He also submitted that relying upon the decision of the Apex Court in case of ***Pasupuleti Venkateswarlu v. The Motor & General Traders*** reported in ***AIR 1975 SC 1409*** that while granting the relief Court can mould the relief considering the subsequent events and financial condition of petitioner. He also relied upon the certain decision of this Court of learned Single Judge where the question of back wages has been examined relying upon the decision of Apex Court that in such circumstances, back wages should not have to be granted to the workman though termination order has been set aside by the Labour Court. Except these, no other submissions are made by the learned advocate Mr. D.S. Vasavada and any other decision is relied by learned advocate Mr.Vasavada.

5. Learned advocate Mr. A.K. Clerk appearing on behalf of the respondent – workman submitted that award passed by the Labour Court is based on legal

evidence and no error has been committed by the Labour Court while passing the award. The question on 'industry' has been examined by the Labour Court on the basis of the evidence led before it and there was no justification for terminating the service of workmen proved by the petitioner before the Labour Court. The principles of natural justice has been violated as well as Section 25-F is also violated by the petitioner and therefore, Labour Court has rightly granted the reinstatement with 70% back wages while keeping in mind the status of the petitioner – trade union and position of the trade union. He also submitted that petitioner has not produced on record except constitution of the Union and annual report of the Union. He also submitted that affidavit in respect to subsequent event cannot be taken into account while examining the award in question. He also submitted that this Court having very limited power under Article 227 of the Constitution of India and this Court may not interfere in such award where examined the fact based on evidence. Except that learned advocate Mr. Clerk has not made any other submissions and relied upon any decision.

6. I have considered the submission made by both the learned advocate and I have also appreciated the vehemence on the part of learned advocate Mr. Vasavada. The reference was made by appropriate Government on 3rd October 1985 and the service of the workman was terminated on 31st December 1984. Before the Labour Court, the respondent workman had filed

statement of claim vide Exh.4. According to the respondent, she was working for more than six years as a Telephone Operator and without any reason and justification with a victimization, her service was terminated on 31st December 1984. Against the statement of claim, the petitioner has filed reply before the Labour Court vide Exh.9 raising the contention that petitioner is not covered by definition of 'industry' and respondent workman was appointed as a trainee operator and stipend was paid to the respondent workmen. The respondent was appointed due to recommendation made by representative of the petitioner union. Her work was not found satisfactory but with a hope that she will work properly. She was made confirmed with effect from 1st May 1984 and thereafter within a period of eight months, her service was terminated on 31st December 1984. It is also a case of the petitioner that while working as Telephone Operator, she was not prepared to work in any shift including night shift. Therefore, her service was terminated. The financial condition of Union is not good and petitioner is not able to absorb or reinstate the respondent workman. The notice was given to the workman and thereafter, her service was terminated. According to the petitioner, in all, she has rendered two years and two months service as a permanent employee. Therefore, reference is required to be dismissed.

7. The workman was examined vide Exh.13 before the Labour Court and one Fazalur Raheman Abdul Rafiq –

Telephone Operator examined vide Exh.28. Except that, either side was not examined any witness before the Labour Court. Both the parties were submitted the written arguments to the Labour Court then Labour Court has examined the question of an 'industry'. In light of the definition given in the provisions of Section 2-J of the Industrial Disputes Act, 1947. The Labour Court while appreciating the evidence of workmen at Exh.13, number of activities carried out by petitioner being a printing press, typing classes, shorthand classes, watch repairing work and work of printing as well as shorthand and other work has been taken from outsider and doing manually by petitioner union and on that basis, the service rendered to the society satisfying the human wants and wishes and having more than 400 to 450 workmen working in the petitioner union on the basis of the salary, therefore, Labour Court has considered the oral evidence of the workman vide Exh.13. The Labour Court has considered that in cross-examination of the said workman, petitioner has not challenged to such activities which has been deposed by the workman and there is no denial has been taken by the petitioner from the workman. So, in short, evidence of the workman giving details about the various activities carried out by petitioner remained unchallenged and no rebuttal evidence has been produced by the petitioner before the Labour Court. Then, Labour Court has further considered the cross examination of the workman that there are number of office bearers, president, secretary, in all, they were five persons

having separate cabin and also having separate extension. The petitioner union maintained the complaint department, legal department, central department, account department, 'latta' department and also maintaining the office of union with the help of non trade union employees working in the petitioner union. The respondent workman has to work as a Telephone Operator. She attending each and every telephone received from outside and management committee or board having the supervision and total control upon the workmen who were appointed by the petitioner union. There were sufficient committees working under the Joint Management Committee and upon that, a managerial board/mandal was there which satisfied the requirement of employer. Thereafter, Labour Court has considered the object of the union on the basis of the constitution which was produced by the petitioner before the Labour Court. The Labour Court has considered various object which is to be maintained / implemented by the petitioner union but satisfy the human wants/wishes and to develop the labour condition by helping to the labourers for satisfying their social obligations. To maintain the good relations with the employer and workman as a sole collective bargaining agent at being a representative union under the Bombay Industrial Relations Act, 1946, therefore, according to the petitioner, the petitioner has not satisfied the triple tests laid down by the Bangalore Water Supply case. The Labour Court further considering the various activities and come to the conclusion that a

systematic activities are going on with the help of employees/employer relationship and such activities are satisfied the human wants/wishes rendering the services to the society by the petitioner union. It is not union which having only a special or personal skill for various activities. It is not a religious or spirituous activities carried out by the petitioner union. These are the aspects which taken into account by the Labour Court and also considered Exh.34 – Budget of 1995 and 1996 produced by the petitioner wherein Labour Court has found that looking to the Budget as well as revised Budge of the petitioner union and considering the figure of income and expenses, it satisfied that petitioner Union carried out various kind of welfare, social and other similar activities in the society not only limited to the members / labourers of the Textile Mill. Therefore, Labour Court has considered that looking to the Budget of two years, the petitioner union is not doing only activities of the trade union but various kind of semi business activities having more than 400 to 450 employees and maintaining the complaint department, legal department, central department, account department and 'latta' department having union office with various kind of semi business and commercial activities carried out with the help of relationship with non trade union employees/employer. The salary was paid by the petitioner union to each workmen. There is a recruitment procedure also how to employed the workman in petitioner union, therefore, according to

Labour Court, while appreciating the oral evidence of the workman and documentary evidence of Budget and Constitution, the Labour Court has come to the conclusion that activities which have been carried out as per the evidence of the workman and budget, the triple tests laid down by the Apex Court in Bangalore Water Supply case has been fully satisfied by the petitioner union. Thereafter, Labour Court has considered the merits of the matter and come to the conclusion that termination of the respondent workman without any justification, it is also bad and in respect to the allegation, no reasonable opportunity was given to the workmen and therefore, Labour Court has come to the conclusion that on both the grounds either it may be considered simple termination, other way, it may be retrenchment and if it is considered to be a stigma or allegation, no departmental inquiry was initiated against the workman, therefore, termination is bad and ultimately, Labour Court has come to the conclusion that when termination order has been set aside then workman is entitled the normal relief of reinstatement. Labour Court has considered the past record wherein nothing was pointed out by the petitioner and also appreciated the certificate which has been given by the petitioner vide Exh.16 dated 12th December 1984 that conduct of the respondent workman is good and she is honest and hard worker which has been considered by the Labour Court and ultimately come to the conclusion that order of termination is bad, illegal and workman was prepared to join the duty according

to her evidence vide Exh.13 but petitioner was not ready to reinstate the workman during the pendency of reference. The specific affidavit was filed by the workman on 5th March 1993 that inspite of sincere efforts made by respondent workman for getting job/employment but she was not able to get any employment or any gainful employment and still she remained unemployed. Against that affidavit, no counter affidavit is filed by the petitioner before the Labour Court, therefore, Labour Court has believed it and relied upon such affidavit as well as keeping in mind the activities of trade union, Labour Court has reduced the back wages from 100% to 70% of interim period.

8. I have considered the affidavit which has been filed by the petitioner wherein it was pointed out that deteriorate condition of the petitioner union, the membership of the petitioner union is reduced each year from 1985 to 2005 and also reducing the employees from 178 to 39 and some of were retired and some of were got VRS. According to petitioner union, in all, 37 persons were obtained VRS and more than Rs. 8 lakhs have been paid by the petitioner to such workmen. In subsequent affidavit, financial constrain has been pointed out by the petitioner union.

9. In view of the aforesaid observations made by this Court while examining the award in question, the contention which has been raised by the learned advocate Mr. Vasavada is that whether petitioner

union is an 'industry' or not? Therefore, the definition of Section 2-J of the Industrial Disputes Act, 1947 is quoted as under :

> ***"Section 2-J : 'industry' means any business, trade, undertaking, manufacture or calling of employees and includes any calling service, employment, handicraft, or industrial occupation or avocation of workman."***

10. The decision of the Apex Court in case of **Banglore Water Supply and Sewerage Board v. A. Rajappa and others** reported in ***AIR 1978 SC 548***, deciding the triple tests for examining the question of industry is quoted as under :

> *"Industry" as defined in S. 2 (j) has a wide import.*
> *Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale, prasad or food,) prima facie, there is an "industry" in the enterprise.*
> *Absence of profit motive or gainful objective is irrelevant, be the venture in the public,*

joint, private or other sector.

The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

Although S. 2 (j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to over-reach itself.

"Undertaking" must suffer a contextual and associational shrinkage as explained in AIR 1953 SC 58, so also, service, calling and the like. This yields the inference that all organised activity possessing the triple elements above mentioned, although not trade or business, may still be "industry" provided the nature of the activity viz., the employer-employee basis, bears resemblance to what is found in trade or business. This takes into the fold of "industry" undertakings, callings and services adventures analogous to the carrying on of trade or business. All features, other than the methodology of carrying on the activity viz., in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for

or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

The consequences are (i) professions, (ii) clubs (iii) educational institutions, co-operatives, (iv) research institutes, (v) charitable projects and (vi) other kindred adventures, if they fulfil the triple tests listed above, cannot be exempted from the scope of S. 2 (j).

A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters marginal employees are hired without destroying the non-employee character of the unit.

If, in a pious or altruistic mission, many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical center or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve

are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt, not other generosity, compassion, developmental passion or project.

The dominant nature test :

Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not "workmen" or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments will be true test. The whole undertaking will be "industry" although those who are not "workmen" by definition may not benefit by the status.

Sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S. 2 (j).

Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

AIR 1970 SC 1407; AIR 1963 SC 1873; AIR 1975 SC 2032; AIR 1963 Cal 310; AIR 1962 SC 1080,

AIR 1968 SC 554 and AIR 1969 SC 276, Overruled; AIR 1960 SC 610, Approved.

(Para 161)

147. The Cricket Club of India 1969 (1) SCR 600 : (AIR 1969 SC 276) stands in a worse position. It is a huge undertaking with activities wide-ranging, with big budgets, army of staff and profit making adventures. Indeed, the members share in the gains of these adventures by getting money's worth by cheaper accommodation, free or low priced tickets for entertainment and concessional refreshments; and yet Bhargava J. speaking for the Court held this mammoth industry a non-industry. Why? Is the promotion of sports and games by itself a legal reason for excluding the organisation from the category of industries if all the necessary ingredients are present? Is the fact that the residential facility is exclusive for members an exemptive factor? Do not the members share in the profits through the invisible process of lower charges ? When all these services are rendered by hired employees, how can the nature of the activity be described as self-service, without taking liberty with reality? A number of utilities which have money's worth, are derived by the members. An indefinite section of the community entering as the guests of the members also share in these services. The testimony of the activities can leave none in doubt that this

colossal 'club' is a vibrant collective undertaking which offers goods and services to a section of the community for payment and there is co-operation between employer and employees in this project. The plea of non-industry is unpresentable and exclusion is possible only by straining law to snapping point to salvage a certain class of socialite establishments. Presbyter is only priest writ large. Club is industry manu brevi.

Co-operatives

Co-operatives societies ordinarily cannot, we feel, fall outside Section 2(j). After all, the society, a legal person, is the employer. The members and/or others are employees and the activity partakes of the nature of trade. Merely because Co-operative enterprises deserve State encouragement the definition cannot be distorted. Even if the society is worked by the members only, the entity (save where they are few and self-serving) is an industry because the member-workers are paid wages and there can be disputes about rates and different scales of wages among the categories i.e. workers and workers or between workers and employer. These societies – credit societies, marketing co-operatives, producers' or consumers' societies or apex societies – are industries.

148. Do credit unions, organised on a co-operative basis, scale the definitional walls of industry? They do. The judgment of the

Australian High Court in The Queen v. Marshall; Ex Parte Federated Clerks Union of Australia, (1975 (132) CLR 595) helps reach this conclusion. There, a credit union, which was a co-operative association which pooled the savings of small people and made loans to its members at low interest, was considered from the point of view of industry. Admittedly, they were credit unions incorporated as co-operative societies and the thinking of Mason J. was that such institutions were industrial in character. The industrial mechanism of society according to Starke J. included

“all those bodies 'of men associated, in various degrees of competition and co-operation, to win their living by providing the community with some service which it requires'.”

Mason J. went a step further to hold that even if such credit unions were an adjunct of industry, they could be regarded as industry.

149. It is enough, therefore, if the activities carried on by credit unions can accurately be described as incidental to industry or to the organized production, transportation or distribution of commodities or other forms of material wealth. To our minds the evidence admits of no doubt that the activities of credit unions are

incidental in this sense.

150. This was sufficient, in his view, to conclude that credit unions constituted an industry under an Act which has resemblance to our own. In our view, therefore, societies are industries.
The Safdarjund Hospital case (AIR 1970 SC 1407)."

11. In case of **State of U.P. v. Jai Bir Singh** reported in ***(2005) 5 SCC 1*** and larger bench decision of Apex Court wherein the decision of Bangalore Water Supply has been referred to the larger bench. The relevant para is as under :

"On the question whether "Social Forestry Department" of the State, which is a welfare scheme undertaken for improvement of the environment, would be covered by the definition of "industry" under Section 2(j) of the Industrial Disputes Act,1947, an apparent conflict between the decisions of two Benches of the Supreme Court in the case of Chief Conservator of Forests v. Jagannath Maruti Kondhare, (1996) 2 SCC 293 of three Judges and State of Gujarat v. Pratamsingh Narsinh Parmar, (2001) 9 SCC 713 of two Judges was noticed. The aforesaid Benches culled out differently the ratio of the seven Judge Bench

decision of the Supreme Court in the case of Bangalore Water Supply & Sewerage Board v. A. Rajappa (1978) 2 SCC 213. As the cleavage of opinion between the two Benches was on the basis of the decision in the case of Bangalore Water Supply, the present case along with the other connected cases, in which correctness of the decision in the case of Bangalore Water was doubted, was placed before the present Constitution Bench. Question arose whether the decision in Bangalore Water Supply requires reconsideration by a larger Bench.

Answering in the affirmative, the present Constitution Bench of the Supreme Court unanimously

HELD :

There are compelling reasons, more than one, before the Supreme Court for making a reference on the interpretation of the definition of "industry" in Section 2(j) of the Act, to a larger Bench and for reconsideration by it, if necessary, of the decision rendered in the case of Bangalore Water Supply & Sewerage Board. The larger Bench will have to necessarily go into all legal question in all dimensions and depth."

12. The Bombay High Court In case of **Rashtriya Mill Mazdoor Sangh & Ors. V/s. K.B.Wagh, Presiding Officer, 11th Labour Court & Ors.** reported in ***1995 (1) LLJ 629***, the question whether trade union is an 'industry' or not has been examined by Bombay High Court. The relevant observation has been made as under :

> *"6. As against this Mr.Gokhale appearing for third respondent workman pointed out that having regard to the ratio of the Supreme Court decision in Bangalore Water Supply and Sewerage case the first petitioner has clearly all the attributes of an industry and must be treated as such. He pointed out the nature of the activities conducted by the first petitioner, the number of employees and relying upon the observations of the Supreme Court in paras 103-130 at page and particularity the tests laid down in Para 131 at pages 404-405 of (1978-I-LLJ-349) he contended that the first petitioner must be held to be an industry. He also placed reliance upon the Division Bench decision (1988-I-LLJ-464), and stated that there is hardly any difference between the nature of the activities carried on by the Mill Mazdoor Sabha which was the trade union concerned in Vasudeo Ambre's case and the first*

petitioner Rashtriya Mill Mazdoor Sangh. The only difference is that Mill Mazdoor Sabha is concerned with the silk textile industry in Bombay whereas Rashtriya Mill Mazdoor Sangh is concerned with the cotton textile industry in the city of Bombay.

9. At this interim stage, I am inclined to accept the submission of Mr.Gokhale. There is concurrent finding of fact recorded by the two authorities that the first petitioner is an industry. The manner in which the order of termination has been issued appears to be rather unusual and extraordinary. The background of the representation submitted by 47 out of 64 members of the Managing Committee through the third respondent cannot be overlooked or brushed aside. Prima facie, the order of termination does not appear to be innocuous and one has to lift the veil and find out the reason for issuance of th said order in such extreme and ugly haste. However, since I am hearing the petition against interim orders which are concurrent. I am not expressing any final opinion on the merits of the

contentions. The parties are yet to lead evidence at the trial . Suffice it to say that having regard to the law laid down by the Supreme Court in the case of Bangalore Water Supply and Sewerage (supra) as also the law laid down by the Division Bench of this Court in Vasudeo Ambre;s case. I find no reason to interfere with the interim orders at this stage. Needless to say that balance of convenience is overwhelmingly in favour of the third respondent. In the circumstance3s, the petitioner is summarily dismissed. The Trial Court is directed to hear and dispose of the complaint within six months form today."

13. Another decision of Bombay High Court in case of **Dattatraya Gopal Paranjpe V/s. Rashtriya Mill Mazdoor Snagh & Ors.** reported in ***1995-II LLJ 913***, Bombay High Court again examined the question whether trade union is an 'industry' within the meaning of Section 2-J of Industrial Disputes Act, 1947 or not? and whether it enables of writ jurisdiction of the High Court. The Bombay High Court decision is delivered by Justice Shri B.N. Srikrishna who elevated as Judge, Supreme Court of India. The said decision is directly applicable to the facts of this case. It is also union working in Cotton Textile

Industry. It is a representative union and approved union under the provisions of B.I.R. Act, 1946. This union also having almost similar systematic activities carried out with the help of employer and employees relationship. Employing non trade union employees as Peon, Telephone Operator, etc. In this case, Bombay High Court has held that trade union is covered by definition of Section 2(J) of the Industrial Disputes Act, 1947 as an 'Industry'. Therefore, such question is examined in detail by Bombay High Court applicable to the facts of this case. The following observations are as under :

> ***"17. The Vice-President of the First Respondent who filed his affidavit was cross-examined and under cross-examination he admitted that the typing and tailoring classes were not meant for members only and that outsiders also had access to both. Similarly, he admitted that the membership of the library was open to all members of public and not restricted to the members of the First Respondent. He also admitted that the cooperative society selling grains and provisions run by the first Respondent was also open to outsiders who were permitted to make purchases therein and that the said society even had an agency of selling cement and carried out its***

activities from its office situated within the premises of the First Respondent. As to the guest house at Khandala, the witness of the First Respondent stated that it was the property of the First Respondent and the entire building situated in Bombay was also the property of the First Respondent. He went on to say that the guest house was run by the First Respondent and admitted that the said guest house was available to the officials of the First Respondent at Rs.5/- per day per room and also to outsiders on payment of Rs.10/- per day per room, at higher charges. He also admitted that there is one Hall known as Mahatma Gandhi Hall, situated in Mazdoor Manzil, which was let out on rent for cultural activities and could accommodate 650 persons at a time. That the said Trust owned staff quarters in the compound of the First Respondent's premises and recovered rent from the occupants of quarters and that it had another building which house existing and retired employees of the First Respondent, apart from collecting subscription from its members, was also

collecting service charges of 3% to 5% from its members, who received their gratuity or retrenchment compensation, and ad hoc payment of Rs.3/- to Rs.5/- from members who received their bonus amounts. That different types of employees had been placed in different grades and paid Dearness Allowance. Transport Bhatt and reimbursement of Traveling Concession, was also admitted by him. The learned Judge of the Labour Court seems to have misread the evidence, in so far as the admission made by the Vice President of the First Respondent, about the different activities carried on such as typing class, tailoring class, printing press, canteen, library, co-operative society, etc. AS I have already referred to, while reproducing and applying the test laid down by the Supreme Court in Rajappa's case, the learned Judge of the Labour Court, misdirected himself in assuming that in order to been "industry", the predominant activity must be of commercial nature. With this misdirection, the learned Judge immediately came to the erroneous conclusion that, in as much as all activities carried on by the First

Respondent were incidental or ancillary to main activities of the Trade Union, there being no activity of commercial nature, the First Respondent could not be held to be an industry within the meaning of Section 2(j) of the Industrial Disputes Act. A careful and proper application of the true test in Rajappa would have shown otherwise.

18. What results are yielded by application of the true test of 'industry' as postulated in Rajppa. The First Respondent carries on systematic activities. Its activities are organized by co-operation of the First Respondent and its employees. It is admitted that about 60 to 100 employees are employed by the First Respondent on its different types of activities inclusive of its own administrative staff, apart from employing Trade Unionist properly so-called . That the First Respondent also employed non-Trade Unionist employees for administrative purpose such as Clerks, Accountants, Peons, Drivers and so on, is not disputed. Ms.Buch disputes that there is any production and/or distribution of

goods and services recalculated to satisfy human wants and wishes in the enterprise. The contents that even assuming that all elements of the test in paragraph (1) of Clause (a) are fully satisfied in the First Respondent's case, element (3) of the test in Rajappa remained unsatisfied in her submission, by carrying out the legitimate activities of a Trade Union, the Trade Union does not cater to human wants and wishes. On the other hand, it is contended that, what is catered to are the spiritual wants, inclusive of material things or services, needed by human beings to turn themselves into better citizens. The true aim of a Trade Union is to emancipate, educate and elevate a workman to become an ideal citizen of the country, fully award of his rights and duties, as a responsible constituent of society. This does not entail rendering of services to satisfy human wants and wishes,a s contemplated in element (iii) in paragraph I, Clause (a), of the test formulated in Rajappa, according to Ms.Buch, I must confess that the argument does have prima facie appeal. Looked at from a purely theoretical point of view,

the argument may be plausible, but I cannot consider the argument in abstracto. The tenability of this argument must be tested against the back-drop of the facts in the First Respondent's case. That, at the ideal or ideological level, the First Respondent caters to the inner carvings of the spirit of the human being for betterment, may be true, but at the objective level the First Respondent's primary objective is to organize the employees in the textile Mills in Bombay, to educate them as to their rights and perhaps their responsibilities also-to ensure that they are better fitted for collective bargaining for their wages and other conditions of service. The primary emphasis is not really on the spiritual aspect, but on the material aspects, i find it difficult to persuade myself that the periodical strikes and exercise in collective bargaining, are intended more for satisfaction of the spirit than of material wants. It is no possible, therefore, to accept the contention that the First Respondent's services are rendered only to satisfy the spiritual cravings of workers. The primary

objective of the First Respondent is really the material wants and perhaps after the material wants have been substantially satisfied, to cater to the workmen's spiritual wants. After all, as Swami Vivekanand once said, one cannot tech philosophy to people with empty stomachs. At the current stage of evolution of Trade Unions in this Court- the First Respondent being no exception- it is difficult for me to accept that the role of the Trade Union is merely that of spiritual mentor. In my considered view the activities of the First Respondent do positively answer the test in paragraph (I)(a)(iii) formulated in Rajappa's case. Once the test in paragraph I is answered positively as pointed out in Rajappa's case, prima facie, there is a industry. The Supreme Court pointed out in Rajappa that absence of profit motive or gainful objective is irrelevant. That the true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relationship, is the content of Clause(c) of paragraph-I of the test in Rajappa. Applying this to the activities of the First Respondent, I find it difficult to

take the view that the nature of the activity, with special emphasis on the employee-employer relationship between the First Respondent and its employees, which would be inevitable for successful carrying out of its objects, could leave the First Respondent out of the net of Section 2(j).

19. Then we turn to Paragraph-II of the test, where the Supreme Court pointed out that all organized activities possessing, the triple elements in paragraph I (supra), although not trade or business, may still be 'industry' provided the nature of the activity, viz the employer-employee relationship, bears resemblance to what we find in trade or business. The Court then pointed out that all features, other than the methodology of carrying on the activity, namely in organizing the co-operation between the employer and employee, may be dissimilar, and that i does not matter, if on the employment terms there is analogy. For a clerk, driver, lift-man, peon and accountant, or any other employee, the work that is done is work which fetches his livelihood.

That he does the work in the office of the registered Trade union, or in the factory or a trading Company, is irrelevant in so far as co-operation between capital and labour and the employer-employee relationship is concerned. The pattern is identical and it is this structural parallelism which the Supreme Court was at pains to emphasis form R.M.Banerjee to Rajappa. received from the perspective of methodology, there is hardly any difference between the work in First Respondent's employment or elsewhere in a business house.

20. Then come the observations of the Supreme Court in paragraph III, where the Supreme Court administers a stern caveat:

"Application of these guidelines should not stop short of their logical, reach by invocation of creeds, cults or inner sense of incongruity or other sens of motivation for or resultant of the economic operation. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes,

between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less nothing more".

It is trite to say that the Trade Union striving for the ideal of social justice to its member-workmen, should render social justice to its own workmen. That all charity must begin at home is an adage that is conveniently forgotten. I see no reason why a Trade Union must be excluded from the definition of "industry" in Section 2(j), merely because its objects are ideal or ideological. The reasons adumbrated by the Supreme Court in Rajppa's case for roping in charitable and religious establishment into the net of the definition in section 2(j) of the Industrial Disputes Act, are equally application to the case of Trade Union and it is unnecessary to repeat them. Conceptually, to think of a Trade Union as an industry is not only foreign, but may even appear incongruous. It was equally so in the case of parties, acaemia and religious institutions. That there can be occasions of break-down of

industrial relations and industrial peace, that there can be utter chaos in industrial relations and that there can be recurring industrial disputes within the st up f a Trade Union itself, are hard facts of life which need recognition. Being mindful of the stern caveat administered by the Supreme Court in paragraph III of the test in Rajappa. I am of the view that these considerations require the court to ensure that the range of the statutory ideology must inform the reach of the statutory ideology must inform the reach of the statutory definition, nothing less nor nothing more, outhit to be done by the Court, Ergo, in my judgment, the First Respondent clearly answers the definition of 'industry' as laid down in Section 2(j) of the Industrial Disputes Ac as expounded in Rajppa, I am not inclined to accept the argument of Ms.Buch that all the persons employed by the First Respondent are motivated by a spirit of self-sacrifice. True, they may be accepting employment on terms far below those obtainable elsewhere in open market, but that is not necessarily indicative of alack of employer-employee

relationship. That is necessary ingredient of the market forces of Labour Economics. Apart from ideal or ideological considerations, several other forces operate and prevail upon a person to accept employment on terms lesser than what he might have bargained for in an open market. Per se *that does not militate against there being an employer-employee relationship. I am also not inclined to accept the argument of Ms.Buch that the test indicated in paragraph IV by the Supreme Court in Rajppa's case should override and result in holding that a Trade Union can never be an industry. True, the Supreme Court emphasizes the dominant nature/ test and point out that, where entity carries on a complex of activities, some of which qualify for exemption from the ambit of industry and some do not, it is the nature of dominant activity which must decide the issue. In the case of the First Respondent, however, as I see from its constitution, apart form employing employees on ancillary objects such as administrative work, the constitution empowers the President or Vice President to appoint Assistant Secretaries to*

carry out functions of Trade Unionist, properly so called. That this power has been exercised and the three petitioners were employed as Assistant Secretaries, is an admitted fact. That their services were no longer required is evident from the letters dated July. 23, 1984terminating their service. It is, therefore, difficult to agree with Ms. Buch when she says that there is some other dominant activity which should dominate the colour or character of the First Respondent as a whole. AS far as I can red from the constitution of the First Respondent, it appears to be empowered to employ persons on both types of activities. In any event, even if i consider the running of a Trade Union as the dominant activity and the employment of workmen was for administrative and other peripheral purposes, even then, I am of the view that the dominant activity itself falls within the ambit of the term 'industry' of Section 2(j) of the Industrial Disputes Act. Whichever way i look at it, there seems to be no escape for the First Respondent form the net of Section 2(j). I am, therefore, of the view that the

learned Judge of the Labour Court erred in law in holding that the First Respondent is not an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act. Differing therefrom, i am inclined to take the view that the First Resemblance clearly falls within the meaning of the term' industry' as defined in Section 2(j) of the Industrial Disputes Act, 1947."

14. The Division Bench of Madhya Pradesh High Court in case of ***Mahila Samiti, Tikamgarh and State of Madhya Pradesh & Ors.*** reported in ***1993-III LLJ 468*** where the question has been examined whether Mahila Samiti engaging in systematic activities of promoting health and training woman in family planning has held to be an 'industry'. The relevant observation made by Division Bench of Madhya Pradesh High Court is quoted as under :

"4. .....

The Seven Judges Bench in Bangalore Water Supply Case (supra) overrulled the earlier decisions in Safdarjung Hospital, New Delhi v. Kuldip Singh Sethi (1970) 2 LLJ 266; National Union of Commercial Employees v. IndustrialTribunal (1962) I LLJ 241; The Secretary Madras Gymkhana Club Employees' Union v. Management (1967) 2 LLJ 720; University of Delhi v. Ramnath's cse (supra); Dhanrajgirji Hospital v. Workmen (1975) 2 LLJ

409 and other rulings whose rationruns counter to the principles enunciated in that case. The view taken in State of Bombay v. Hospital Mazdoor Sabha 1960 I LLJ 251 has been rehabilitated :

5. *Still one does not have a working formula as to what activity is an industry and what is not. The Judges in Bangalore Water Supply case (supra) despite their efforts to find a working formula ' have cried in frustration for legislative reforms'. Given activity has to be examined in the lights of its functions and within the guidelines laid down in Bangalore Water Supply case (supra) to find out if that activity is an industry. The manner in which the activity in question is organized or arranged, the condition of co-operation between the employer and employee necessary for its success and objects to render the material service to the community where finally held to be the test to judge whether the activity is 'industry'. Regarding the activity of running of a hospital which is a welfare activity and not a sovereign function, it was observed that hospital facilities, research products and training services are service and hence industry and absence of profit or function of training and research would not take the institution out of the scope of industry.*

6. *As stated earlier, the object of the petitioner society is to advance social economic educational and cultural standard of workmen in*

Tikamgarh district. It also undertook to further the social welfare schemes and family planning programme of the State Government and the State Government in turn would make some grant of funds to the petitioner. To carry out the family planning programme as sponsored by the State Government, the petitioner engaged the services of respondents Benibai Smt. Sharikunisa and Smt.Margarate Masih. Apparently under this family planning programme the petitioner was providing hospital facilities. The appointments of the respondents as Health Assitant and Aya do give an indiction that hospital facilities were provided by the petitioner. Services akin to those as are rendered in the hospital were carried on by the petitioner society. It was held in Gulab Singh Chauhan v. State of MP 1983 MP LJ 815 by the learned Single Judge (KN Shukla,J.) that the activies of Family Health Centre under the Public Health and Family Planning Department of the State Government are such which are carried on by an organization having employers and employees. With its objective of promoting material services to the community. We approve the view taken by the learned Single Judge. The activities of the petitioner society as set forth above while promoting the family planning programme of the State Government do provide material services to the community. Apart from this as stated in the return filed by the employees, the petitioner society undertakes and is sympathetically engaged in carrying on the job of training the workmen for knitting and embroidering the cloth

and the material so obtained is sold in market. The petitioner also manufactures chalk to be sold in market and also in the schools. Tat pattis are also manufactured and sold by it. It also runs schools and chargh fees from children it also manufactures Papad Badi and Masalas to be sold in the market. All these averments made on affidavit have not been denied by the petitioner by filing any counter affidavit. The petitioner is thus engaged in systematic activities of promoting health and training women in family planning programme and also other commercial activities and is an organization having employers and employees. These services so rendered to the community by the petitioner society make it industry within the meaning of section 2(j) of the Industrial Disputes Act. The respondents employees who were employed by the petitioner society to render such services for reward must be held as workmen and defined in section 2(s) of the Act."

15. In case of ***Tirumala Tirupati Devsthanam and Commissioner of Labour, Andhra Predesh,*** reported in ***1979(1) LLJ 448,*** Andhra Pradesh High Court in case of 'Tirupati' is held to be an 'industry'. The relevant para is quoted as under :

"Section 2(h) of the Trade Unions Act defines "trade union" as follows :
'Trade union' means any combination whether temporary or permanent, formed primary for the purpose of regulating the relations

between workmen and employers or between workmen and workmen, or between employees and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions".

It is clear from this definition that the combination is formed for regulating relations between workmen and employers or between workmen and workmen or between employers and employers. In the recent case, the combination which has been registered as a trade union is one of workmen. In order to understand the meaning of workmen, we have to turn to S. 2(g) of the Trade Unions Act, which defines the trade dispute as :

" trade dispute' means any dispute between employers and workmen or between workmen and workmen....."

In the same sub section it is stated that workmen means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises. Though from the fact the definition of "workmen" appears as part of the definition of trade dispute", under S. 2(g) it would indicate that the definition is only for the purposes of that sub section, in the ab sense of any other definition of the expression 'workmen" it would be reasonable

to adopt this definition even where that expression occurs in other parts of the Act. Reading these two sub sections together, it is clear that in order that a combination of workmen should be a trade union, such workmen must be persons employed in a trade or industry. The question therefore ultimately resolves itself into considering whether the Tirumala Tirupati Devasthanam in which the workmen are employed is a trade or industry. The institution in which the workmen have been employed should be in the nature of industry is also clear from S. 22 of the Trade Unions Act which says that not less than one half of the total number of the office bearers of every registered trade union shall be persons actually engaged or employed in an industry with which the trade union is concerned.

8. The expression 'trade or industry' is not defined in the Trade Unions Act. But the meaning of the expression 'industry' as used in theIndustrial Disputes Act has been the subject matter of consideration by the Supreme Court in a number of cases. In that Act, industry is defined as meaning any business, trade undertaking manufacture or calling of employers and includes any calling, service, employment, handicrafts, or industrial occupation or avocation of workmen (vide S. 2(j) of the Act). In the

absence of any definition of 'industry' in the Trade Unions Act, it appears to us that the same considerations which have been held to be relevant for the purpose of holding whether an institution of an industry or not under the Industrial Disputes Act, would be equally relevant for the purposes of the Trade Unions Act. It is, therefore, useful to refer briefly to the decisions of the Supreme Court considering the expression 'industry' used in the Industrial Disputes Act. “

9 to 19 xxx xxx

20. All the above cases were considered and discussed at length, in the recent decision of the Supreme Court in Workmen,Indian Standards Institution v. Indian Standards Institution [1976-I LLJ 33]; (1976) 2 SCR 138, AIR 1976 SC 145, After an exhaustive consideration and on an analysis, the Supreme Court held by majority that the activities of the Indian Standards Institution fall within and must be regarded as industry as defined under section 2(j) of the Industrial Disputes Act. It was held further that an activitycan be regarded as an industry, if there is relationship of employer and employees and former is engaged in 'business', trade, undertaking, manufacture or calling of

employer's and thelatter, 'in any calling, service, employment, handicraft or industrial occupation or avocation'. Though 'undertaking' is a word of large import, it must be read as meaning of an undertaking analogous to trade or business. In order that an activity may be regarded as an undertaking analogous to trade or business, it must be 'organized or arranged in a manner in which trade or business is generally organized or arranged'. It must rest on cooperation between employer and employees who associate together with a view to production, sale or distribution of material goods or material service. It is entirely irrelevant whether or not there is profit motive or investment of capital in such activity. It is also immaterial whether its objects are charitable or that it does not make profits. The Act also contemplates cases of industrial disputes where the Government or a local authority or a public utility service may be the employer. It also makes no difference that the material services rendered by the undertaking are in public interest.

21. Bearing in mind the above principles enunciated by the Supreme Court, it has to be considered whether the Tirumala Tirupati Devsthanam can be considered to

be an industry and the persons employed by it are workmen and whether they can register themselves into a trade union.

22. The Tirumala Tirupati Devsthanam consists of a group of religious institutions in Tirumala and Tirupathi. They are together regarded as one religious institution for the purpose of Charitable and Religious Endowments Act. The main function of the Devasthanam is to arrange for the worship in its temples and to enable the pilgrims from all parts of India to visit temples and offer their prayers. It is, therefore, essentially a religious institution. Having regard to the enormous income which this Devsthanam derives, it utilises the income for various educational and religious purposes. It has established several educational institutions and also it is one of the prime donors of the Venkateswara University.In order to cater to the thousands of pilgrims especially to the temple of Tirumalai, the Devasthanam also runs several canteens, dispensaries etc. It has necessarily to provide for transport of the pilgrims which it was undertaking on its own till recently. It has departments dealing with supply of electricity and water, not only to the pilgrims but to the members of the staff, Archakas, etc., and to the

> quarters constructed in Tirumala for the benefit of the pilgrims. Even though, having regard to the enormous flow of pilgrims throughout the year the Devasthanam has to maintain several departments, there can be no doubt that the essential character of the institution is that of a religious institution. We cannot therefore regard the Devsthanam generally as an industry within the meaning of Trade Unions Act or within the meaning of Industrial Disputes Act. “

16. In case of ***Nehru Yuva Kendra Sangathan and Union of India and others*** reported in ***2000 (86) FLR 450 (Delhi High Court)***, the relevant paras are quoted as under :

> **Whether Nehru Yuva Kendra is 'industry':**
>
> 3. *It is the submission of the petitioner that the petitioner is a registered society in the name of Nehru Yuva Kendra Sangathan (NYKS) under the Societies Registration Act, 1860. This Sangathan started in 1972 under the Ministry of Human Resource Development, Department of Youth Affairs and Sports,Government of India. The main objects of the NYKS are social transformation in rural area and in preserving promoting and developing concept of unity and national integration, discipline, self help and secularism, democracy, scientific temper, cultural and heritage, functional literacy,*

building awareness among the rural youths and in providing avenues to the youth to strive towards excellence in all sphere of activities. The programmes are proposed by HRD Ministry/Ministry of Youth Affairs and Sports and the same is completely funded by the Ministry for the training programmes, social service programme, sports, games, physical educational and adult literacy etc.It was further submitted that NYKS is an organization and the same is dedicated to implement the different projects of the Ministry of HRD and has been working under the guidelines of the Government of India. Therefore, an activity of Government of India undertaken through the NYKS herein cannot be regarded as Industry because the same is done in discharge of its sovereign functions. The petitioner herein is engaged in discharging of its sovereign function for the public welfare and hence the same does not fall under the definition of Industry as defined under section 2(j) of Industrial Disputes Act, 1947. In support of his submissions, learned counsel relied upon the judgment of Supreme Court in the case of Physical Research Laboratory v. K.G. Sharma [1997 (76) FLR 212 (SC)]. It was also submitted that the petitioner herein is engaged in Public Welfare functions and discharging the directive principles of the State Policy. It is also carrying on different projects to promote the national integration, developing critical awareness among the youth of the country of their environments and social service programmes. The Hon'ble Supreme Court has also

held in the case of Bangalore Water Supply and Sewerage Board. v. A. Rajappa and others [1978 (36) FLR 266 (SC)] that the activity undertaken by the State and when the same are governed by the separate rules and constitutional provisions such as Articles 310 and 311 should strictly speaking be excluded from the sphere of industry by necessary implications. The main objects of NYKS are to provide social services to the public at large and the same are done without expecting any return in the form of monetary or in any other form and it is further submitted that social evolution is a process of constant growth and the State cannot afford to stand still without taking adequate measures through different organizations and hence the services provided by NYKS cannot be defined as industry. The Hon'ble Supreme Court has also held that the word industry can reasonably mean only activity which results in good made and manufactured or service rendered which are capable of being converted into saleable ones. They must be capable of entering the world of 'res commercium' although they may be kept out of the market for some reason. It is not the motive of an activity in making them marketable if one who makes goods or renders service so desires, that should determine whether the activity lies within the domain or circle of industry. In the petitioner's Sangathan the employee/volunteers do the services to the community at large without any profit motive and the petitioners' activity are completely in the name of sovereign function.

4. *On the other hand, Mr. Sanjay Parikh, learned Counsel appearing for the workman submitted that the petitioner was an Industry within the meaning of section 2(j) of the ID Act and this aspect was clearly answered by Supreme Court in the case of Bangalore Water Supply and Sewerage Board v. A. Rajappa and others [1978 (76) FLR 266 (SC)]. He submitted that the said judgment holds the field till date and in fact whenever the another bench of Supreme Court took contrary view it was specifically over-rulled by the larger bench of the Supreme Court relying upon Bangalore Water Supply case (supra). To substantiate this, he submitted that the Supreme Court in two judgments, namely Sub Divisional Inspector of Posts v. Theyyam Joseph [1996 (72) FLR 690(SC)] and Bombay Telephone Canteen Employees Association v. Union of India [1997 (77) FLR 25 (SC)] had distinguished Bangalore Water Supply case (supra) and had held that the establishments therein were not covered by the definition of industry. These two judgments were over-rulled by a Bench of 3 Judges in General Manager Telecom v. S. Srinivas Rao [1998 (78) FLR 143 (SC)] where it was held that Bangalore Water Supply case (supra) holds the field. Thereafter, in Coir Board v. Indira Devi [1998 (78) FLR 847 (SC)], cited Physical Research Laboratory case (supra) and also other cases mentioned above, in Paras 17 and 18 of its judgment, and had decided to refer the decision in Bangalore Water Supply case (supra) for reconsideration by a Larger Bench. Subsequently,*

three judges of the Supreme Court held by its order dated 10th November, 1998 in Coir Board case (supra) held that Bangalore Water Supply case (supra) does not require any reconsideration. Learned counsel relied upon paras 126, 140, 141, 142 and 143 of the judgment of Supreme Court in the case of Bangalore Water Supply case (supra) and submitted that in these paras it has been categorically held that co-operative societies and other societies are industries. The activity of the petitioner is a systematic activity organised by co-operation by employer and employee and it is meant for services to satisfy human wants and wishes. The profit motive is immaterial; philanthropy is immaterial and the decisive test is to see the nature of activity with special emphasis on employer-employee relationship. If one looks at the resolution, Nehru Yuva Kendra Sangathan (Service Regulations) 1987 and the Rules of Nehru Yuva Kendra Sanghatan and also illustrative list of activities undertaken by Nehru Yuva Kendra, it becomes clear that all the tests given in Bangalore Water Supply case (supra) are fulfilled to declare Nehru Yuva Kendra Sanghatan and "industry" under Section 2(j) of the I.D. Act, 1947. It was also submitted that the petitioner had not raised the contention that petitioner was doing sovereign function before the CGIT and in any case the function being discharged by the petitioner cannot be treated as sovereign function.

5. *Obviously Bangalore Water Supply case (Supra)*

which is 7 Judge Bench judgment rendered by the Apex Court still holds the field. This does not need any clarification or detailed discussion. Still on may refer to observations of the Supreme Court judgment in the case of General Manager Telecom v. S. Srinivas Rao (supra) wherein three Judges Bench judgment specifically stated that the aforesaid judgment continues to be enforced and is a binding precedent. In this case Supreme Court laid down triple elements to determine as to whether a particular establishment would be industry within the meaning of Section 2(j) of the I.D. Act. Discussion of this aspect can be found in para 140 of the Bangalore Water Supply case (supra), which reads as under :

“140. 'Industry' as defined in Section 2(j) and explained in Banerji (supra), has a wide import.

(a) Where (i) systematic activity, (ii) organised by co-operation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g., making, on a large scale prasad or food), prima facie, there is an 'industry' in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with

special emphasis on the employer employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking"

6. *Further in para 142 of the judgment, Supreme Court observed that even professions, clubs, educational institutions, co-operatives, research institutes, charitable projects and other kindred adventure would fall in the definition of industry if they fulfill the aforesaid triple tests. The particular establishments may qualify for exemption in the following cases :*

'142 ......

a).....

b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

c) If, in a pious or altruistic mission many employee themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose of cause, such as lawyers volunterring to run a free legal services clinic or doctors serving in their spare hours in a free medical center or ashramites working at the bidding of the holiness, divinity or like central

personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt-not other generosity, compassion, developmental passion or project."

7. *Thereafter the Court proceeded to lay down the dominant nature test in para 143, which reads as under :*

"143. The dominant nature test :

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi case (supra) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (supra), will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not to be welfare activities or economics adventures undertaken by Government or statutory bodies.

(C) Even in departments discharging sovereign function, if there are units which are

industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby."

8. *The case of the petitioner is to be adjudged on the basis of aforesaid triple tests laid down by the Supreme Court. From the arguments advanced by learned counsel for the petitioner one can say that petitioner was registered as a Society with laudable and altruist objectives in mind. However, that by itself would not qualify for exemption inasmuch as absence of profit motive or gainful objective is irrelevant. Likewise even educational institutions, charitable projects and other kindred adventures would be industry, if they fulfill triple tests. It cannot be denied that there is a systematic activity is organised by co-operation between employer and employees and services are rendered to satisfy human wants and wishes. Triple test is, therefore, satisfied in this case.*

9. *xxx*

10. *xxx*

11. *xxx*

12. *Mr. Parikh, learned counsel for the workman is right in contending that even Telecom Department of Union of India as well as Department of Posts were held to be an "Industry" and contrary view taken by two Judges Bench of Supreme Court was over-ruled in the*

case of General Manager Telecom v. S. Srinivas Rao (supra). In this case J.S. Verma, Chief Justice, speaking for the Court referred to Para 143 of the Bangalore Water Supply case (supra) and held that these Departments were not engaged in discharging of the sovereign function of the State. As far as judgment of the Supreme Court in Physical Research Laboratory case (supra) is concerned, it is clearly distinguishable. In that case the Court clearly found that triple test as laid down in Bangalore Water Supply case (supra) was not fulfilled. For this, one may usefully refer to discussion contained in para 12 of this judgment, which is as follows :

12. "PRL is an institution under the Government of India's Department of Space. It is engaged in pure research in space science. What is the nature of its research work is already stated earlier. The purpose of the research is to acquire knowledge about the formation and evolution of the universe but the knowledge thus acquired is not intended for sale. The Labour Court has recorded a categorical finding that the research work carried on by PRL is not connected with production, supply or distribution of material goods or services. The material on record further discloses that PRL is conducting research not for the benefit or use of others. Though the results of the research work done by it are occasionally published they have never been sold. There is no material to show that the knowledge so acquired by PRL is marketable or has any commercial value. It has not been pointed out how the knowledge acquired

by PRL or the results of the research occasionally published by it will be useful to persons other than those engaged in such type of study. The material discloses that the object with which the research activity is undertaken by PRL is to obtain knowledge for the benefit of the Department of Space. Its object is not to render services to others nor in fact it does not except in an indirect manner."

(emphasis supplied)

13. Thus, the Court found that Physical Laboratory has engaged in pure research in space science. It was not intended for sale meaning thereby no not for the benefit or use of the others. Thus, third test laid down in Bangalore Water Supply case (supra) was clearly missing. Therefore, this judgment is of no help to the petitioner.

14. In view of the aforesaid discussions, I agree with the findings of the CGIT that petitioner is Industry within the meaning of Section 2(j) of the Industrial Disputes Act.

17. The burden of proof is lying with the petitioner that petitioner union is not an 'Industry'. However, respondent workmen has satisfactorily explained various activities which satisfied human wants and wishes not only members of petitioner union but the community at large in society. The petitioner union having their own building, rest house, printing press, typing classes, tailoring classes and other

activities selling the articles, credit union bank, for which, any person from the community get the benefit of such activities and it is not limited to only members of petitioner union. An nature of activities clearly established semi business/ commercial/trade activities. The burden of proof lies on whom has been examined by Apex Court in case of ***Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif and others***, reported in ***AIR 1968 SC 1413***, the Apex Court has held as under :

> *"Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. In Murugesam Pillai v. Gnana Sambandha Pandara Sannadhi, 44 Ind App 98 at p. 103 = (AIR 1917 PC 6 at p. 8) Lord Shaw observed as follows :*
>
> *"A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of he onus of proof, and failing. accordingly, to furnish to the Courts the best material for its decision*

With regard to third parties, this may be right enough - they have no responsibility for the conduct of the suit but with regard to the parties thee suit it is, in their Lordships' opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition."

18. In case of **ANIL RISHI V. GURBAKSH** reported in **2006 (5) scale 153**, the relevant paras are as under:

“19. There is another aspect of the matter which should be borne in mind. A distinction exists between a burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is which party is to begin. Burden of proof is used in three ways : (i) to indicate the duty of brining forward evidence in support of a proposition at the beginning or later (ii) to make that of establishing a proposition as against all counter evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule is Section 101 is inflexible. In terms of Section 102 the

initial nus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.

20. In R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswanmi & V.P.Temple and Anr. (JT 2004 (6) SC 442), the law is stated in the following terms :

"29.In a suit for recovery of possession based on title it is for the plaintiff to prove his title and satisfy the court that he, in law, is entitled to dispossess the defendant from his possession over the suit property and for the possession to be restored to him. However, as held in A. Raghavamma v. A Chenchamma there is an essential distinction between burden of proof and onus of proof : burden of proof lies upon a persons who has to prove the fact and which never shifts. Onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. In our opinion, in a suit for possession based on title once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant it is for the defendant to discharge his onus and in the

absence thereof the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiff's title."

19. In decision which relied and cited by learned advocates how to read such decisions and how to apply in facts of each case and how to understand the decision while finding out ratio of the such decision is relevant therefore, following decisions are considered by me. In case of ***M/s. Amar Nath Om Prakash and others v. State of Punjab and others*** reported in ***AIR 1985 SC 218***, the relevant para 11 is as under:

"11. There is one other significant sentence in Sreenivasa General Traders v. State of A. P. (supra) with which we must express our agreement. It was said, with utmost respect, these observations of the learned judge are not to be read as Euclid's theorems, nor as provisions of the statute. These observations must be read in the context in which they appear". We consider it proper to say, as we have already said in other cases that judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussion but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments.

They interpret words of statutes, their words are not to be interpreted as status. In London Graving Dock Co. Ltd. v. Horton, 1951 AC 737 at P. 761, Lord Mac Dermot observed :
"The matter cannot, of course, be settled merely by treating the ipsissima, verba of Willes, J.' as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

In Home Office v. Dorset Yacht Co. (1970) 2 All ER 294, Lord Reid said, "Lord Atkin's speech .....is not to be treated as if it was a statutory definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell L. J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board, (1972) 2 WLR 537 Lord Morris said :
"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

20. In case of ***M/s. Gasket Radiators Pvt. Ltd. V. Employees' State Insurance Corporation and another*** reported in ***AIR 1985 SC 790***, the Apex

Court has held as under :

> *“....We once again have to reiterate what we were forced to point out in Amar Nath Om Prakash v. State of Punjab, AIR 1985 SC 218, that judgment of Courts are not to be construed as Acts of Parliament. Nor can we read a judgment on a particular aspect of a question as a Holy Book covering all aspects of every question whether such questions and facets of such questions arose for consideration or not in that case....”*

21. In case of ***Municipal Corporation of Greater Bombay and others v. Thukral Anjali Deokumar and others*** reported in ***AIR 1989 SC 1194***, the relevant observation is as under :

> *“Any observation in a judgment has to be read and understood in the context of the facts of that particular case in respect of which such observation has been made. As has been pointed out, the question that has been considered in Pradip Jain's case (AIR 1984 SC 1420) relates to reservation of seats in the medical colleges on the ground domicile of residential qualification within the State irrespective of merit. It was not the case of anybody that reservation of seats should be made on the ground of college wise institutional preference.”*

22. In case of ***Prakash Amichand Shah v. State of***

Gujarat and others reported in ***AIR 1986 SC 468***, the relevant observations are as under :

> *"(B) Constitution of India, Art.141 - PRECEDENT - Precedent - What is - Duty of Court while applying, stated.*
> *A decision ordinarily is a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in case which comes up for decision subsequently. Hence while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. (Para 26)*
> *An inappropriate purpose for which a precedent is used at a later date does not take away its binding character as a precedent, in such cases there is good reason to disregard the later decision. Such occasions in judicial history are not rare."*
>
> *Para.26. But the learned counsel for the appellant. however drew our attention to certain subsequent decisions of this Court to persuade us to differ from the above view. First he referred us to the decision of this Court in R. C. Cooper v. Union of India, (1970) 3 SCR 530 : (AIR 1970 SC 564) which is*

popularly known as the Bank Nationalisation case, in which again the majority judgment was written by Shah, J. Then the learned counsel referred us to the decision in Kesavananda Bharati v. State of Kerala, (1973) Suppl SCR 1 : (AIR 1973 SC 1461) and to the decision in State of Karnataka v. Ranganatha Reddy, (1978) 1 SCR 641 : (AIR 1978 SC 215) in support of his plea that the decision in Shantilal Mangaldas's case (supra) stood overruled. We have gone through these decisions carefully. Before embarking upon the examination of these decisions we should bear in mind that what is under consideration is not a 'statute or a legislation brut A decision of the Court. A decision ordinarily is a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. We have earlier seen what Justice Shah has laid down in Shantilal Mangaldas's case (supra). The very same Judge delivered the majority judgment in the Bank Nationalisation case (1970) 1 SCC 248 : (AIR

1970 SC 564) in which he observed at pages 103 and 304 (of SCC) : (at p. 607 of AIR) thus :-

"There was apparently no dispute that Art. 31(2) before and after it was amended guaranteed a right to compensation for compulsory acquisition of property and that by giving to the owner, for compulsory acquisition of his property, compensation which was illusory, or determined by the application of principles which were irrelevant, the constitutional guarantee of compensation was not complied with. There was difference of opinion on the matter between the decisions in P. Vajravelu Mudaliar's case, (AIR 1965 SC 1017) (supra) and Shantilal Mangaldas's case, (AIR 1969 SC 634) (supra). In the former case it was observed that the constitutional guarantee was satisfied only if a just equivalent of the property was given to the owner : in the latter case it was held, that "compensation", being itself incapable of any precise determination, no definite connotation could be attached thereto by calling it "just equivalent" or "full indemnification", and under Acts enacted after, the amendment of Art. 31(2) it is not open to the Court to call in question the law providing for compensation on the ground that it is inadequate, whether the amount of compensation is fixed by the law or is to be determined according to principles specified therein. It was observed in the judgment in

Shantilal Mangaldas's case, (AIR 1969 SC 634) (supra) at p. 651:

"Whatever may have been the meaning of the expression "compensation" under the unamended Art. 31(2), when the Parliament has expressly enacted under the amended clause that 'no such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate', it was intended clearly to exclude from the jurisdiction of the Court an enquiry that what is fixed or determined by the application of the principles specified as compensation does not award to the owner a just equivalent of what he is deprived."

23. The parties who having possessions of documents should have to produce before the Court for doing justice or helpful in doing justice. In this case, petitioner – union having materials and documents are in his possession but not produced before the Court and no oral evidence also led before the Labour Court. That aspect is examined by the Apex Court in case of ***National Insurance Co. Ltd. New Delhi vs. Jugal Kishore and others*** reported in ***(1988) 1 SCC 626***, the relevant observations are as under :

"10. Before parting with the case, we consider it necessary to refer to the attitude often adopted by the Insurance Companies, as was adopted even in this case,

of not filing a copy of the policy before the Tribunal and even before the High Court in appeal. In this connection what is of significance is that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof. This Court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State such as the appellant who are under an obligation to act fairly. In many cases even the owner of the vehicle for reasons known to him does not choose to produce the policy or a copy thereof. We accordingly wish to emphasise that in all such cases where the Insurance Company concerned wishes to take a defence in claim petition that its liability is not in excess of the statutory liability it should file a copy of the insurance policy along with its defence. Even in the instant case had it been done so at the appropriate stage necessity of approaching this Court in Civil Appeal would in all probability have been avoided. Filing a copy of the policy, therefore, not only cuts short avoidable litigation but also helps the Court in doing justice between the parties. The obligation

on the part of the State or its instrumentalities to act fairly can never be over-emphasised.”

24. In case of ***Gujarat Forest Producers, Gatherers & Forest Workers Union v. State of Gujarat*** reported in **2004 (2) GLR 1488**, the relevant observations are as under :

“The "limitation role" of Banerji was noticed in paragraph 60 of the judgment in Bangalore Water Supply by observing that the expression "analogous to trade or business" cuts down "undertaking" a word of fantastic sweep. In paragraph 65 of the judgment, the Court warned against the literal latitude of the words in the definition in the following terms :

"Even here, we may warn ourselves that the literal latitude of the words in the definition cannot be allowed grotesquely inflationary play but must be read down to accord with the broad industrial sense of the nation's economic community of which labour is an integral part. To bend beyond credible limits is to break with facts, unless language leaves no option. Forensic inflation of the sense of words shall not lead to an adaptational breakdown outraging the good sense of even radical realists. After all, the Act has

> been drawn on an industrial canvas to solve the problems of industry, not of chemistry. A functional focus and social control decideratum must be in the mind's eye of the Judge." The Court held that if the nature of the activity is para-trade or quasi-business, it is of no moment that it is undertaken in the private sector, joint sector or labour sector, it is "industry".”

25. In view of the above decision, which has been considered by me in respect to various contentions raised by learned advocate Mr. D.S. Vasavada and in light of the activities which has been narrated by the workman before the Labour Court, against which, no rebuttal evidence has been produced by the petitioner to establish that petitioner union is not an 'industry', therefore, according to the Labour Court, the appreciation of the evidence led before it, this being a right conclusion in the law in absence of evidence from petitioner. Therefore, Labour Court has rightly decided the issue on the basis of evidence. There is no contrary finding given by the Labour Court from the record and finding of Labour Court is not baseless and perverse in respect to deciding the issue that petitioner union is an 'industry'. However, at this juncture, it is made clear that decision of this Court confirming the award of Labour Court to the effect that the petitioner union is to be held an 'industry' which cannot be applicable to the other trade union activities which union having no such type of other

activities carried out. This decision will applicable only to the facts of this Court looking to the evidence on record.

26. The Labour Court has rightly appreciated the fact that the workman had served for more than six years service including training period. She was made permanent by the petitioner and as a permanent employee more than two years and two months service was rendered by her. According to the petitioner, no satisfactory work was carried out by the respondent. This being a reason to terminate the service. No notice or departmental inquiry was held against the workman, therefore, principles of natural justice has been violated by the petitioner and in case if simple termination, it amounts to retrenchment under Section 2(OO) and Section 25-F of the Industrial Disputes Act has been violated. Therefore, Labour Court has rightly satisfied the termination order. The petitioner is not made any prayer before the Labour Court to establish the charge of unsatisfactory work by leading proper evidence. The petitioner has examined only one witness who was Telephone Operator and nothing to do with the various activities carried out by the petitioner. There is no denial or any rebuttal evidence was produced by the petitioner against the evidence of workman vide Exh.13. Therefore, Labour Court has rightly set aside the termination and granted reinstatement with continuity of service.

27. I have considered the decisions which have been relied by learned advocate Mr. Vasavada the number of decisions in such cases based on such facts before the Court. I am examining the matter on the basis of the evidence led before the Labour Court, so, none of the decision which applied to the facts of the present case which relied by learned advocate Mr. Vasavada. The principle which has been examined by the Apex Court in case of *Bangalore Water Supply (supra)* is squarely satisfied in case of the petitioner and therefore, Labour Court has rightly set aside the termination order and granted the relief. The contentions raised by learned advocate Mr. Vasavada is that the activities which has been narrated by workmen vide Exh.13 is not carried out by petitioner union. But, for that, no evidence was produced by the petitioner union before the Labour Court. In the present case, petitioner union was having very large membership, having own building with different departments and activities which are carried out is assessed to public at large. Running Majoor Bank, Khadi Hat, Printing Press, Typing Class, Short Hand Class, Repairing of Watch and selling the articles to public at large, receiving the material from outsiders with the help of employees more than 400 to 450 workers in the scale paying them Dearness Allowance and other service benefits as if a regular appointment made in organization. Maintaining the Sewing Classes and for that, enrollment fee and some expenses has been taken from outsiders and these are the activities which have been carried out as

narrated by the workmen, it is not limited to only members of the petitioner union but it assessed the public at large. The decision which has been relied by learned advocate Mr. Vasavada is based on facts of each case. No ratio from any judgment pointed out or demonstrate by learned advocate Mr. Vasavada which applied to the facts of this case. It is the duty of the advocate to demonstrate while citing the decision that how this judgment is applicable to the facts of the present case. But no such efforts were made and merely relying upon numbers of decisions which really applied to the facts of that case. Therefore, the contentions raised by learned advocate Mr. Vasavada with citations of number of decisions are not accepted by this Court in light of the facts finding given by the Labour Court. No office bearer of the petitioner union was examined to deny such activities before the Labour Court by the petitioner. Therefore, the decisions which relied by learned advocate Mr. Vasavada are not helpful to the petitioner union.

28. In respect to the question of back wages, the financial constrain which has been pointed out by learned advocate Mr. Vasavada and reduction in number of posts and employees and membership on the basis of the subsequent affidavit placed on record of the present petition. I have considered the facts and according to my opinion, when termination has been found to be illegal by the Labour Court and workman is entitled ordinarily the full back wages of interim period unless exception is required to be proved by

employer. (***See : M/s. Hindustan Tin Works Pvt. Ltd., v. The Employes of M/s. Hindustan Tin Works Pvt. Ltd. And others*** reported in ***AIR 1979 SC 75 & G.T. Lad and others, v. Chemicals and Fibres India Ltd.,*** reported in ***AIR 1979 SC 582)*** There is no positive evidence produced by the petitioner before the Labour Court about the gainful employment of respondent workman. A specific affidavit was filed by workmen placed before the Labour Court about the unemployment and no counter was filed by the petitioner before the Labour Court, therefore, Labour Court has rightly considered the status of the petitioner union and also keeping in mind the trade union activities, not granted the full back wages of interim period. Therefore, Labour Court has granted 70% back wages of interim period. According to my opinion, in light of the evidence as it is rightly appreciated by the Labour Court. For that also, Labour Court has not committed any error which requires interference by this Court while exercising the power under Article 227 of the Constitution of India.

1. This aspect has been considered by the apex court in ***Laxmikant Revchand Bhojwani and another versus Pratapsing Mohansingh Pardeshi***, reported in ***(1995) 6 SCC 576***. Relevant observations made by the apex court in para 9 of the said judgment are therefore reproduced as under:

“The High Court under Article 227 cannot

assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes. “

2. In ***Ouseph Mathai and Others versus M. Abdul Khadir***, reported in ***(2002) 1 SCC 319***, the apex court observed as under in para 4 and 5 :

“4. It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as a matter of right. In fact power under this Article cast a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law

conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. In Waryam Singh v. Amarnath (1954 SCR 565) this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bose v. Commr. of Hills Division (1958 SCR 1240). In Bhahutmal Raichand Oswal v. Laxmibai R. Tarta (AIR 1975 SC 1297) this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the Legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R v. Northumber Compensation Appeal Tribunal, Ex parte Shaw (1952 (1) All ER 122, 128) this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Gurnam held : (SCC p.460 para 20)

"20. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice (see Trimbak Gangadhar Teland 1977 (2) SCC 437). Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of

factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

3. In ***Roshan Deen versus Preeti Lal***, reported in ***(2002) 1 SCC 100***, the apex court observed as under in paragraph 12:

“We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it (vide State of UP v. District Judge, Unnao [(1984) 2 SCC 673: AIR 1984 SC 1401]). The very purpose of such constitutional powers being conferred on the High Court is that no man should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, not merely to pick out any error of law through an academic angle but

to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-produce of an erroneous view of law, the High Court is not expected to erase such justice in the name of correcting the error of law."

29. In the case ***Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and another*** reported in ***AIR 2000 SC 1508***, the Apex Court has held as under :

*"**19.** The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings at any rate, as long as they are based upon some material which are relevant for the purpose or even on*

the ground that there is yet another view which can be reasonably and possibly one taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned single Judge and in ordering restoration of the Award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did , and the manner of consideration undertaken, the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of re-assessing the evidence and arriving at findings of ones own, altogether giving a complete go-bye even to the facts specifically found by the Tribunal below.“

30. Therefore, there is no substance in the present petition. The present petition is

accordingly dismissed. No order as to costs. Interim relief, if any, stands vacated.

31. After completing of the said decision, learned advocate Mr. Vasavada requested to stay the operation of this order. The request made by the learned advocate Mr. Vasavada is completely unreasonable on the ground that the service of the respondent – workman is terminated in the year 1984 and thereafter, she made reference before the Labour Court regarding the said termination in the year 1985, thereafter, the award is passed by the Labour Court in the year 1996 in favour of the present respondent-workman and thereafter, the present petitioner has preferred this Special Civil Application before this Court in the year 1997 and after a long period of 9 years, this Court examined the matter which involves 22 years period of long litigations by the workman against the trade union, decided by this Court today, while making great efforts to complete the hearing and now, to ask for interim stay is totally unreasonable and therefore, such request has been rejected.

32. This Court has made very clear in body of the judgment that this decision has been given by this Court on the basis of fact finding given by the Labour Court and on the basis of records, therefore, this decision is not made applicable or not to apply any other trade union which is registered under the provisions of Trade Union Act, 1926 not having

activities as enumerated and discussed in this case, therefore, this decision is not applicable to other trade union.

[H.K. RATHOD, J.]

#Dave